this California case, there is an agreement founded upon a valid consideration, and partly performed so as to alter materially the position of the party performing, the case may be brought within the established equitable doctrine allowing specific performance of parol contracts.[11]

JURISDICTION IN AN ACTION FOR INFRINGEMENT OF FOREIGN PATENT. — In the United States the courts will entertain suits for foreign torts, whether common law or statutory, unless the cause of action is repugnant to the public policy or morals[1] of the home state; and the question of whether the *lex fori* would give a remedy for the same cause arising within the state, is considered only as evidence of whether morals or policy would be offended against by such action.[2] The English rule as laid down in the case of The Halley,[3] which must now be taken as settled law, is less liberal than the American, and denies that the courts have jurisdiction to entertain any suit for a tort committed abroad, unless the act would have been tortious by the principles of the English law. A late case in Victoria has denied the right to sue there for the infringement of a patent in New South Wales, one of the justices taking the ground that the combination of chemicals complained of, if it had been made in Victoria, would not have infringed any patent there existing. *Potter* v. *Broken Hill Proprietary Co.* (1905), Vict. L. Rep. 612.

We believe that the justice erred in his interpretation of the rule which he was applying, when he insisted that the criterion was whether the physical actions of the defendant would have been actionable if stripped of their context of local rights and obligations and transferred to the home state. The rational basis of the English rule is the feeling that the courts should not be required to hear suits for foreign causes of action which would have been deemed trivial or impolitic if they had arisen at home. But the infringement of a patent right would have been a tort if it had occurred in Victoria. And to argue that the physical acts of the defendant would not have been an actionable infringement of patent in Victoria because there was no patent there to infringe is as irrelevant as to argue that the blow of a defendant sued in England for an assault in France would not have been a tort in England because the person of the plaintiff would have been safe across the channel. This particular infringement could not have occurred in Victoria, but the essential fact is that if an infringement had occurred there, redress would have been given under Victorian law.

The broader interpretation suggested above, as opposed to the construction of the Victoria judge, makes the English rule more nearly consistent with that applied in similar cases in America, and with the general common law rule as to foreign contracts, which allows recovery unless the agreement sued on was against the morals or policy of the home state;[4] and there is no consideration of principle or expediency offsetting the failure of justice which arises from allowing a tortfeasor to escape restitution by moving

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[11] Devonshire *v.* Eglin, 14 Beav. 530.

[1] Herrick *v.* Minneapolis, etc., Ry. Co., 31 Minn. 11; Dennick *v.* Railroad Co., 103 U. S. 11.

[2] *Cf.* Leman *v.* Baltimore, etc., R. R Co., 128 Fed. Rep. 191.

[3] The Halley, L. R. 2 P. C. 193; *cf.* Phillips *v.* Eyre, L. R. 6 Q. B. 1–28.

[4] Columbia, etc., Ass'n *v.* Rice, 68 S. C. 236.

across a boundary line. Unfortunately, by sheer weight of authority and sanction of time, the rule must still stand that there can be no recovery for trespass to foreign realty,[5] though even here there is some dissent.[6] Otherwise the one sensible and consistent principle to be applied to personal actions is that laid down by Dicey, that "any right which has been duly acquired under the law of any civilized country is recognized and in general enforced by English courts," unless "the enforcement of such right is inconsistent with the policy of English law." [7]

RECENT CASES.

AGENCY — TERMINATION OF AUTHORITY — POWER COUPLED WITH AN INTEREST. — The plaintiff's intestate delivered to her agent her savings bank book in the defendant bank, together with a power of attorney to deposit and draw money. After her death, but before the defendant learned of her death, the defendant made payments to the agent. There was no evidence of an intention on the part of the intestate to make a gift or pledge to the agent. *Held*, that the bank is liable for the amount paid over, as the power of the agent was not coupled with an interest and was therefore terminated by the death of the principal. *Hoffman, Administrator*, v. *Union Dime Savings Institution*, 109 N. Y. App. Div. 24. See NOTES, p. 287.

AGENCY — UNDISCLOSED PRINCIPAL'S RIGHTS WITH RESPECT TO THIRD PERSONS — OFFER TO CONTRACT ADOPTED BY UNDISCLOSED PRINCIPAL BEFORE ACCEPTANCE. — A, in his own name, made an offer to sell a certain crane to the defendant. The plaintiff then purchased the crane and authorized A to proceed with the transaction as his agent. The defendant afterwards accepted the offer. *Held*, that the plaintiff cannot sue the defendant on the contract. *Mooney* v. *Williams*, 5 N. S. W. 304.

When a simple contract is made by a person acting as agent for an undisclosed principal, that principal may, in certain cases, be sued and sue on the contract in his own name. *Paterson* v. *Gandasequi*, 15 East 62; *Sims* v. *Bond*, 5 B. & Ad. 389. The true basis of this anomalous doctrine seems to be that although the contracting party is really the agent, yet the relations existing *de facto* between the agent and his principal render it just that under certain circumstances the principal be allowed to sue and be sued as if he were the real contracting party. See *Railton* v. *Hodgson*, 4 Taunt. 576, 577 (note). Otherwise the recognized exceptions to an undisclosed principal's liability are wholly illogical. See STORY, AGENCY, 9th ed., § 449. But the agency must at the very latest exist when the contract is closed. Subsequent ratification will not suffice where the agent purports to act as principal. *Keighly, etc., Co.* v. *Durant*, [1901] A. C. 240. It seems, however, that this relationship need not be contemporaneous with the express offer. The offeree theoretically accepts that offer which he has reasonably been led to believe the offerer is making to him at the moment of his acceptance, the offer being regarded as continuing till this time. But at this moment when the theoretical offer is made and accepted, the offerer is agent. The principal may, therefore, have the right to sue. Practically, it is an undesirable formality to require the withdrawal of an offer merely to repeat it immediately in identical language after the offerer has become agent for the undisclosed principal.

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[5] British, etc., Co. *v.* Companhia de Moçambique, [1893] A. C. 602; Allin *v.* Conn, etc., Co., 150 Mass. 560.

[6] Little *v.* Chicago, etc., Ry., 65 Minn. 48.

[7] Dicey, Conflict of Laws 22, 32.